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JONATHAN BROWNING, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JONATHAN BROWNING, INC., a California
corporation,

Plaintiff,

v.

VENETIAN CASINO RESORT, LLC., a Nevada
limited liability company; LAS VEGAS SANDS,
LLC., a Nevada limited liability company; LAS
VEGAS SANDS CORP., a Nevada corporation;
and DOES 1 through 100, inclusive,

Defendants.

No. C 07-3983 JSW

**PLAINTIFF'S OBJECTIONS TO
THE DECLARATION OF
FRANKLIN H. LEVY SUBMITTED
IN SUPPORT OF DEFENDANTS'
MOTION TO DISMISS**

Date: November 9, 2007
Time: 9:00 a.m.
Place: Courtroom 2, 17th Floor
Judge: Honorable Jeffrey S. White

Plaintiff Jonathan Browning, Inc. objects to paragraphs 10-15 in the Declaration of Franklin H. Levy offered by Defendants Venetian Casino Resort LLC, Las Vegas Sands, LLC and Las Vegas Sands Corp. (collectively “the Venetian”) in support of the Venetian’s motion to dismiss.

I. OBJECTIONS TO THE DECLARATION OF FRANKLIN H. LEVY

A party may only present admissible evidence in support of a Rule 12(b)(2) motion to dismiss for lack of personal jurisdiction. *Naxo Resources (U.S.A.) Ltd. v. Southam Inc.*, No. CV 96-2314, 1996 U.S. Dist. LEXIS 21757, at *2-3 (C.D. Cal. Aug. 20, 1996) (citing *Data Disc, Inc. v. Sys. Tech. Assoc., Inc.*, 557 F.2d 1280, 1289 n.5 (9th Cir. 1977)). Jonathan Browning objects to the evidence submitted by the Venetian, as stated below, on a number of grounds, including that the declarant lacks personal knowledge of the asserted facts, and the assertions are speculative and state legal conclusions rather than facts.

Paragraph 10 of the Declaration of Franklin H. Levy states:

It is my understanding that the pertinent records of the Venetian Casino Resort LLC’s human resources department indicate that the Venetian Casino Resort LLC does not employ anyone by the name of Aileen Pauco. Declaration of Franklin H. Levy (Docket No. 14-3) (“Levy Decl.”) ¶ 10.

Objection to Paragraph 10: Plaintiff objects to this paragraph on grounds of hearsay and lack of personal knowledge (Fed. R. Evid. 602, 802) because the declaration sets forth no facts to show that the business records rule in Fed. R. Evid. 803(7) applies. Mr. Levy’s “understanding” is irrelevant, as his state of mind is irrelevant to the case. His “understanding” is also wrong, as shown by Plaintiff’s evidence that in fact Aileen Pauco was employed by the Venetian at the relevant time. *See* Declaration of Marco Heithaus (“Heithaus Decl.”), Ex. A.

Paragraph 11 of the Declaration of Franklin H. Levy states:

The Venetian Casino Resort LLC cannot find any record of requesting a bid from Jonathan Browning, Inc. for wall sconces. Levy Decl. ¶ 11.

Objection to Paragraph 11: Plaintiff objects to this paragraph on grounds of hearsay and lack of personal knowledge (Fed. R. Evid. 602, 802) because the declaration sets forth no facts to show that the business records rule in Fed. R. Evid. 803(7) applies. Moreover,

1 Plaintiff has submitted evidence that the Venetian did request a bid from Jonathan Browning for
2 wall sconces. *See* Heithaus Decl., Ex. A.

3 **Paragraph 13** of the Declaration of Franklin H. Levy states:

4 Based on the allegations and facts in the Complaint, I believe that a large number
5 of potential witnesses on behalf of the Venetian Casino Resort LLC would be
located in the State of Nevada. Levy Decl. ¶ 13.

6 **Objection to Paragraph 13:** Plaintiff objects to this paragraph on grounds of
7 speculation and lack of personal knowledge. *See* Fed. R. Evid. 602. The declaration does not set
8 forth any facts to show why Mr. Levy “believe[s]” that a “large” number of them would be
9 somewhere in the State of Nevada. Indeed, Mr. Levy does not identify a single witness.

10 **Paragraph 14** of the Declaration of Franklin H. Levy states:

11 The evidence supporting the Venetian Casino Resort LLC’s defenses, including
12 its records and employees, is predominately located in Nevada. Levy Decl. ¶ 14.

13 **Objection to Paragraph 14:** Plaintiff objects to this paragraph because it is
14 speculative and because it states a legal conclusion instead of facts. Mr. Levy identifies no
15 factual basis for his assertion that “the evidence supporting [Defendants’] defenses . . . is
16 predominately located in Nevada.” Levy Decl. ¶ 14. To the extent this paragraph refers to
17 evidence supporting defenses, Plaintiff objects to this paragraph as stating a legal conclusion
18 rather than facts. Mr. Levy does not identify what evidence he purports to rely on in making this
19 statement.

20 **Paragraph 15** of the Declaration of Franklin H. Levy states:

21 The burden on the Venetian Casino Resort LLC to transport Nevada-based
22 witnesses and documentary evidence to the Northern District of California would
be substantial, as well as expensive. Levy Decl. ¶ 15.

23 **Objection to Paragraph 15:** Plaintiff objects to this paragraph because it is
24 speculative and because it states a legal conclusion instead of facts. Mr. Levy identifies no
25 factual basis for his assertion that the “burden on [Defendants] . . . would be substantial, as well
26 as expensive.” Levy Decl. ¶ 15. To the extent this paragraph refers to a “substantial” “burden”,
27 Plaintiff objects to this paragraph as stating a legal conclusion rather than fact. Mr. Levy does
28 not identify what facts he relies on in making this statement that would allow this Court to

1 determine the Defendants' burden. Again, Mr. Levy does not identify a single witness or
2 describe what constitutes documentary evidence.

3
4 DATED: October 3, 2007

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6 BINGHAM MCCUTCHEN LLP

7
8 By: /s/ Thomas S. Hixson
9 Thomas S. Hixson
10 Attorneys for Plaintiff
JONATHAN BROWNING, INC.

11 DATED: October 3, 2007

12 DOLL AMIR & ELEY LLP

13
14
15 By: /s/ Gregory L. Doll
16 Gregory L. Doll
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